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| In re Application of: | : |
| Fecher et al. | : |
| Pat. No.: 7,714,132 | : ON REQUEST FOR |
| Issue Date: 05/11/2010 | : RECONSIDERATION OF |
| Application No. 10/598777 | : PATENT TERM ADJUSTMENT |
| Filing or 371(c) Date: 09/11/2006 | : |
| Atty. Docket No.: 66535.000013 | : |

This decision is in response to the "RESPONSE TO PETITION DECISION DATED JULY 22, 2010," filed August 23, 2010. Patentees request that the determination of patent term adjustment be corrected to 833 days. The "RESPONSE TO PETITION DECISION DATED JULY 22, 2010," is properly treated under 37 C.F.R. § 1.705(d).

The request for reconsideration of patent term adjustment is **DISMISSED**.

On May 11, 2010, the above-identified application matured into U.S. Patent No. 7,714,132. The patent issued with a PTA of 833 days.

Patentees argue that the period of delay of 75 days attributed to Patentees in connection with the filing of a "Supplemental Response Under 37 C.F.R. § 111," filed on December 12, 2009, after filing the reply to the Election/Restriction Requirement on September 28, 2009. Patentees assert that the supplemental reply was expressly requested by the Examiner. In support of this assertion, Patentees refer to an Interview Summary entered into the application file on December 8, 2009, wherein

The examiner and the attorney discussed potential rejections. the examiner explained the 112 2nd para for C0-C5 alkylcarbonyl, C0-carbonyl would be C=O only and chemically not possible.

The provisoes because of art make the C1-C5 alkoxycarbonyl groups also obvious, recommend deleting it.

Claims 13 had the term medicament comprising without any other ingredient. The examiner suggested changing it to pharmaceutical composition with the carrier as given in claim 14.

Delete claim 18 and amend claim 15 to read the antagonizing as given on page 69 (delete preventing and treating)

Emphasis supplied.

Initially, a review of the "Supplemental Response Under 37 C.F.R. § 111," filed on December 12, 2009, reveals that Patentees stated therein that it was filed in response to several telephonic interviews, none of which was a telephonic interview with the Examiner on December 4, 2009. The "Supplemental Response Under 37 C.F.R. § 111," filed on December 12, 2009," states that "[t]his Supplemental Amendment is responsive to the telephonic interview with Examiner Desai on Friday, November 4, 2009, Monday, November 7, 2009, and Tuesday, November 8, 2009."

Moreover, a review of the Interview Summary relied upon by Patentees to assert that the Supplemental Amendment filed December 12, 2009 was expressly requested by the Examiner reveals that the Examiner made a suggestion and a recommendation. The Interview Summary does not contain an express request by the examiner that applicant file a Supplemental Amendment.

Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed is deemed a failure to engage in reasonable efforts to conclude prosecution or processing within the meaning of 37 CFR 1.704(c)(8), and a reduction of 75 days, beginning on the day after the date the initial reply was filed, September 29, 2009, and ending on the date that the supplemental reply was filed, December 12, 2009, is properly included in the patent term adjustment.

In view thereof, it is concluded that the Decision on Petition mailed July 22, 2010 correctly calculated the revised Patent Term Adjustment at seven hundred fifty-eight (758) days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Patentees are given **two (2) months** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

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